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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 10

Application Number: 10/039,717
Filing Date: January 03, 2002
Appellant(s): SANDERS, MARK E.

Michael D. Beck
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 29 December 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that

there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-9 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

Re 29,945	SCOTT	1979
JP505071217A	IGARASHI ET AL	1993

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott. Scott discloses multi use concrete form liner with perforations and bends/fold 50/51/52; see figure 4. The device comprising a sheet having a primary portion 43/44 and an overhang portion 45-46 and a fold portion 51 connecting the primary portion to the overhang portion. The primary portion is capable of extending substantially along an entire width of a concrete slab and to cover a portion of the upper surface of the slab adjacent an exposed side of the slab. The overhang portion is suitably sized enabling it to cover a portion of the side of the slab. The fold portion enables the overhang portion to abut the side of the slab when the primary portion is resting on the surface of the slab. The sheet of Scott is capable of being used in another of many multiple uses; it can also be used for protecting a portion of a poured slab during activity at a site adjacent the poured slab.

The sheet is capable of being rolled. The fold portion/line 52 enables folding the sheet. Note: the claims are not method claims but article claims. The material is known to be substantially rigid. See column 4, lines 60-65. Rigid liner material is known in the art.

Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott in view of JP 71217.

Scott lacks a means for temporarily securing a portion of the sheet to the slab as taught by JP 71217. It would have been obvious to include the adhering means in order to prevent the liner from becoming disengaged while in use. JP teaches adhesive. There are various types of adhesives applied in various ways; One of ordinary skill in

the art would have selected any one of those ways types capable of aiding in fulfilling the intended use of the device. Such limitations are within the scope of the invention.

(11) Response to Argument

Applicant argues use; applicant argues the purpose and use of his liner verses those in the prior art. However, the structure is shown by the prior art of Scott and since the class of claims are not directed to a method of use but to an article, the liner; device of Scott may be stated as being capable of functioning as does the recited liner. All of the structural limitations that are recited are shown to exist in Scott's device. Scott clearly shows bends (joint), folds (joint) and perforations; see columns 7 lines 25 –65.

Furthermore, applicant has not clearly defined the fold portion and has not particularly defined it to be distinguishable over the prior art to Scott. The written specification refers to a fold line and not a fold portion; the fold portion appears to be the fold line.

Applicant further argues that the Scott reference does not describe any of the liner panels being connected in any way; neither do the claims. However, Scott describes the liner panels connected by the joints. A joint may be a fold and the Scott patent does show the fold portion/joint connecting the primary to the overhang portion.

Since applicant has not clearly defined the portions and the portions to be distinguishable over the prior art arguments can not be made regarding the differences. Further, the term portion is relative and general; the size of the slab, width and length is not defined. A combination of the two is not claimed. A portion of the slab is not defined to be distinguishable over the prior art. Thus it is clear that the prior art liner may be

divided up into three portions and these three portions may be termed the overhang, the primary and the fold portions. It is clear that the joint or fold portion joins the other two portions.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
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February 18, 2004

Conferees

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